

George Nichols, Jr.
1586 Mt. Moosilauke Highway
Haverhill, NH 03780

Re: Pike Station Store, UST ID#0-110052

**ADMINISTRATIVE FINE
AND LICENSE ACTION
No. AF 05-079**

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Waste Management Division ("the Division") and George Nichols, Jr., parties to the above-captioned matter, and stipulate to the following:

1. The Commissioner of the Department of Environmental Services ("DES"), is authorized under RSA 146-C:10-a to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C and Env-Wm 1401 relating to installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.
2. George Nichols, Jr., is the registered facility owner of one active underground storage tank ("UST") at the Pike Station Store facility ("the Facility"), further identified as UST # 0-110052, located on real property at 1586 Mt. Moosilauke Highway in Haverhill, New Hampshire ("the Property"). George Nichols, Jr. signed the Registration for Underground Storage Tank Systems for the Facility, dated December 14, 1995, as the owner.
3. On September 28, 2005, the Division issued Notice of Proposed Administrative Fine No. AF 05-079 ("the Notice") to George Nichols, Jr. seeking fines totaling \$2,700 for violations of New Hampshire Administrative Rule Env-Wm 1401.
4. The Notice cited George Nichols, Jr. for violating Env-Wm 1401.25(a) by failing to install an overfill protection device on Tank 3. Pursuant to Env-C 607.03(i) the Division sought a fine of \$200. Based on additional information received by the Division, this proposed fine is withdrawn.
5. The Notice further cited George Nichols, Jr., for violating Env-Wm 1401.16(c) by failing to submit a written report of the results of the investigation of the 4 inches of liquid found in the interstitial space. Pursuant to Env-C 607.05(i) the Division sought a fine of \$500.
6. The Notice further cited George Nichols, Jr., for violating Env-Wm 1401.31(a) by failing to maintain the leak monitoring equipment in good working order to continuously perform their original design function and by failing to perform the annual test for proper operation for Tank 3. Pursuant to Env-C 607.05(d) the Division sought a fine of \$1,000.
7. The Notice further cited George Nichols, Jr., for violating Env-Wm 1401.33(b) by failing to provide corrosion protection for the piping under the dispenser of Tank 3. Pursuant to Env-C 607.03(f) the Division sought a fine of \$1,000.

8. In order to settle this matter, the Division and George Nichols, Jr., have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.

9. Of the remaining proposed fine, in the amount of \$2,500, 20% or \$500 shall be suspended due to this being a one-time unintentional violation. An additional 20% or \$500 shall be suspended due to the history of compliance at this Facility. An additional 20% or \$500 shall be suspended due to the small business status of the Facility. An additional \$800 shall be suspended due to the respondent's inability to pay.

10. The suspended portion of the proposed fine, in the amount of \$2,300 is contingent upon George Nichols, Jr., maintaining the subject UST facility in compliance with Env-Wm 1401 for a period of two years from the date of the execution of this Agreement. If George Nichols, Jr., fails to maintain compliance during the two-year period, the suspended portion of the fine, in the amount of \$2,300 shall become due and payable immediately. If Mr. Nichols maintains compliance for the prescribed two-year period, the suspended portion of the fine shall be waived.

11. George Nichols, Jr., agrees to pay the remaining \$200 upon his execution of this Agreement.

12. Payment under Paragraph #11 and any payment that becomes due pursuant to Paragraph #10 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attention: Michael Sclafani, Legal Assistant
P.O. Box 95
Concord, NH 03302-0095

13. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

14. By executing this Agreement, George Nichols, Jr., waives his right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

15. The effective date of this Agreement will be the date on which it is signed by George Nichols, Jr., the Director of the Waste Management Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

16. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any

further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted

COPY
George Nichols, Jr.

George Nichols, Jr., Owner

4-17-06
Date

DES Waste Management Division

COPY
Anthony P. Giunta

Anthony P. Giunta, P.G., Director

4/29/06
Date

This Motion to Accept Settlement agreement is granted this 3rd day of May, 2006.

COPY
Michael P. Noll

Michael P. Noll, Commissioner
Department of Environmental Services